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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4644 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAHIMABEN MOHAMEDSHARIF

Versus

STATE OF GUJARAT

Appearance:

MR TV SHAH for Petitioners
M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 and 227 of the Constitution of India and prayed that this Court may issue proper a writ of mandamus or any other writ in the nature of mandamus or any other proper writ or direction for setting aside the office order of the Home Department Government of

Gujarat, bearing No.PSN/192/4039/2 dated 3rd January 1983 and the Office Order of DSP, Junagadh, bearing No.AD/Pension/302/83/MF of April, 1983 and please to direct the respondent to give all the benefits of family pension scheme to the petitioner from the date of death of Mohamed Sherif, the husband of the petitioner, i.e. from 13th February, 1981 as long as the petitioner lives and please to pass further orders or direction in this behalf.

2. The facts giving rise in this petition are as under.

2:1 Late Mohamed Sharif Fatehhadin, the husband of petitioner original widow Rahimabanu Mohamed Sharif was appointed in the Year-1933 as a Constable in the department of respondent, Junagadh. Late Mohamed Sharif Fatehhadin has served upto 1971 and retired in the Year-1971 as a Head Constable. He ultimately, died on 12th February, 1981.

2:2 After the death of her husband, the petitioner applied to the District Superintendent of Police, Junagadh for sanction of family pension and demanded for granting pension under family pension scheme, by her letter dated 17th February, 1981. It has been awarded, thereafter the petitioner received a letter from the DSP, Junagadh dated 12th October, 1981. In the said letter, the petitioner was informed by the DSP, Junagadh that the petitioner is eligible for the family pension. But, she has to deposit two months' salary through Challan, i.e. Rs.274/- along with three passport size photograph of the petitioner. Thereafter the petitioner has deposited Rs.274/- as demanded by the DSP, Junagadh, by Challan. The petitioner has sent the original challan along with the passport size photograph, with her letter dated 15th October, 1981. In the said letter dated 19th October, 1981 the DSP Office, Junagadh has recommended the application of the petitioner to the Accounts Officer, Accountant General Office, Ahmedabad, in which the DSP has admitted that the necessary option regarding the payment of family pension was not obtained from the late Mohamed Sharif by the DSP Office. It has also been averred in the petition that DSP by his letter addressed in December, 1981 to the Accountant General, Gujarat State, Ahmedabad stated that in the Family Pension Scheme, 1972, the option ought to have been obtained from the person concerned on or before 31st May, 1974. But, no procedure was being followed by the DSP Office and no option was asked for from the deceased, by the DSP Office, and therefore, the family member of the deceased

who is effected by the absence of option should be considered for recovering two months salary required to be paid under Family Pension Scheme and a person should not be victimized because of the lacuna in procedure which is supposed to be followed by the Office of the DSP, Junagadh. It has been further averred that by his letter dated 2nd May, 1982 to the Secretary, Home Department Government of Gujarat, the DSP had given entire details regarding case of persons who were expired and whose heirs applied for the Family Pension Scheme including the case of the petitioner. In that case, DSP has specifically mentioned that the petitioner is entitled for the family pension. It has stated that according to the rules of the Family Pension Scheme persons who wish to take advantage of the scheme should deposit salary of two months. The DSP has also specifically mentioned that the petitioner has already deposited salary of two months with the Government and he is entitled for the family pension. It has further been stated that only lacuna is that the option form regarding family pension scheme has to be filled up on or before 31st August, 1972. But, the said rules regarding filling up of the option form did reached in the DSP Office on 4th August, 1972 and there was only a marginal time for the DSP Office for completing the procedure. It has further been stated that the DSP Office has strongly recommended to sanction the family pension including the family pension of the petitioner. Thereafter, the correspondence ensured between the petitioner and other department and Home Department in this behalf. It has further been averred that the petitioner has received a letter from the Administrative Officer, Inspector General of Police, Government of Gujarat by dated 23rd November, 1982 mentioning that the petitioner's application is being forwarded with a recommendation to the Government on 7th September, 1982 and that the petitioner will be informed in due course of time. It has further been averred that the petitioner has also reminded the IGP, Ahmedabad and DSP, Junagadh by it her letter dated 7th January, 1983 and again by her letter dated 27th January, 1983. It has further been averred that the petitioner received a reply from the IGP, by letter dated 24th January, 1983 that the IGP has forwarded the papers to the DSP, Junagadh and the petitioner should contact the DSP, Junagadh. It has further been averred that thereafter the petitioner reminded the DSP, Junagadh by her letter dated 7th April, 1983 with a request that already three years have passed after the death of her husband and the petitioner is in difficulty to maintain herself. It has averred in the petitioner that the petitioner has received one letter from the DSP, Junagadh

dated April, 1983 ordering that the Home Department of Gujarat Government has rejected the proposal for family of the petitioner dated 3rd January, 1983. It has been averred in the petition that petitioner has received a Service Certificate from the DSP, Junagadh that late Mr. Mohamed Sharif has served with the Department for 32 years 2 months and 20 days.

2:3 It has been averred in the petition that as per the Family Pension Scheme, it is necessary to deposit two months' salary for claiming the family pension. It was the duty of the Department to ask for the option form and ascertained as to whether the servant or any of his family member would receive the pension under the scheme and whether they are willing to pay two months' salary for the purpose. It was submitted that no such form was asked for from the late Mr. Mohamed Sharif. It was further stated that it is also admitted by the DSP, Junagadh, who is the Administrative Officer in the case of the petitioner, in his various letters that the option form was not obtained from the petitioner's husband. It was admitted by the DSP that the non-filling of the option is not due to the fault of the petitioner's husband.

3. In view of the aforesaid correspondence, the petitioner has filed the present petition challenging the action of the Department somewhere in October, 1984 which has been numbered in 1985.

4. The learned counsel appearing on behalf of the respondent Government has pointed out that the Government has filed an Affidavit-in-reply dated 6th December, 1999 one one Shri R. R. Maheria, under Secretary to Government of Gujarat. In the said affidavit, it was stated that a new Family Pension Scheme was introduced for government servants who were in service on 1st May, 1971. In this case, the Family Pension Scheme will be applicable to the petitioner. The pensioner retired on 1st July, 1971 and lived for about ten years after retirement, yet the pensioner had not exercised the option of Family Pension Scheme, 1972, hence, the family of the deceased pensioner is not entitled to be given the benefit of the Family Pension Scheme of 1972. It was also stated in the affidavit that in this case, the Government has introduced the scheme for payment of lump-sum family pension scheme to the widows of the deceased retired Government servant. It was submitted that the amount of lump-sum family pension relief of Rs.80/- per month with effect from 1st July, 1982 was sanctioned in favour of the petitioner by office of the

Assistant Examiner, Local Funds Account by an order dated 30th June, 1983 and the same was sent to the District Treasury Office, Junagadh, the copy of which has been produced alongwith the affidavit. It was submitted that the District Treasury Office, Junagadh has paid Rs.80/per month to the petitioner from 1st July, 1982 till the death of the deceased petitioner, i.e. 10th October, 1984. In view of the same, the petitioner is not entitled to the benefit of the Family Pension Scheme, and is therefore, not entitled to any of the reliefs prayed for in the petition and the petition deserves to be dismissed.

5. In this case, the petitioner has been denied relief only on the ground that she has not exercised the option with the Government on the relevant time as indicated by me in the earlier. The petitioner could not exercise the option not because of the fault of him but fault of the DSP which has been admitted by the DSP, Junagadh. This aspect has not been considered by the deponent in his affidavit-in-reply in this behalf. No doubt, the State Government has introduced the scheme for payment of lump-sum family pension scheme in this behalf. However, the petitioner has been denied that the family pension scheme, 1972. The non-filing of the option is not due to the fault of the petitioner's husband, but because of the fault of the DSP, Junagadh. I, therefore, direct that the heirs of the deceased Mohamed Sharif may file a representation to the Government for obtaining the benefits of family pension scheme in connection with the service of deceased Mohamed Sharif who was working in the Department from 1939 till 1973 and who died in 1981. Then the respondent authority will consider the said representation kindly and sympathetically and in accordance with law as expeditiously as possible.

6. In view of the same, this petition is accordingly disposed of. The Government will decide the matter within two months from the date of receipt of this order. Notice is discharged. Rule is made absolute to the aforesaid extent.

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